

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 321

Introduced by Senator Benoit

February 25, 2009

An act to amend Sections 53753 and 53755 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

SB 321, as amended, Benoit. Local government: assessment and fees: election requirements.

(1) Articles XIII C and XIII D of the California Constitution generally require that assessments, fees, and charges be submitted to property owners for approval or rejection after the provision of written notice and the holding of a public hearing. Existing law, the Proposition 218 Omnibus Implementation Act, prescribes specific procedures and parameters for local jurisdictions to comply with Articles XIII C and XIII D of the California Constitution.

Existing statutory law provides notice, protest, and hearing procedures for the levying of new or increased assessments, fees, and charges by local government agencies pursuant to Articles XIII C and XIII D of the California Constitution.

This bill would limit the information an agency is required to provide in a notice by mail to the record owner of each identified parcel prior to levying the assessment. The bill would prescribe other requirements for the tabulation of ballots if an agency uses agency personnel or a vendor, and for the availability and preservation of ballots to the public as disclosable public records. By creating new requirements for property assessments conducted by counties and cities, the bill would impose a state-mandated local program.

With respect to a proposed increase of an existing fee or charge for a property-related service, if an election is required pursuant to existing law, this bill would impose new requirements regarding the conduct of the election.

By adding new duties to the local officials regarding these fees or charges, this bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 53753 of the Government Code is
2 amended to read:

3 53753. (a) The notice, protest, and hearing requirements
4 imposed by this section supersede any statutory provisions
5 applicable to the levy of a new or increased assessment that is in
6 existence on the effective date of this section, whether or not that
7 provision is in conflict with this article. Any agency that complies
8 with the notice, protest, and hearing requirements of this section
9 shall not be required to comply with any other statutory notice,
10 protest, and hearing requirements that would otherwise be
11 applicable to the levy of a new or increased assessment, with the
12 exception of Division 4.5 (commencing with Section 3100) of the
13 Streets and Highways Code. If the requirements of that division
14 apply to the levy of a new or increased assessment, the levying
15 agency shall comply with the notice, protest, and hearing
16 requirements imposed by this section as well as with the
17 requirements of that division.

18 (b) Prior to levying a new or increased assessment, or an existing
19 assessment that is subject to the procedures and approval process
20 set forth in Section 4 of Article XIII D of the California
21 Constitution, an agency shall give notice by mail to the record
22 owner of each identified parcel. Each notice shall include the total
23 amount of the proposed assessment chargeable to the entire district,
24 the amount chargeable to the record owner's parcel, the duration

1 of the payments, the reason for the assessment and the basis upon
2 which the amount of the proposed assessment was calculated, and
3 the date, time, and location of a public hearing on the proposed
4 assessment. Each notice shall also include, in a conspicuous place
5 thereon, a summary of the procedures for the completion, return,
6 and tabulation of the assessment ballots required pursuant to
7 subdivision (c), including a statement that the assessment shall not
8 be imposed if the ballots submitted in opposition to the assessment
9 exceed the ballots submitted in favor of the assessment, with ballots
10 weighted according to the proportional financial obligation of the
11 affected property. Except for the information described in
12 subdivision (c), this subdivision, and the information required by
13 Section 4 of Article XIII D of the California Constitution, no other
14 information shall be included with the notice. An agency shall give
15 notice by mail at least 45 days prior to the date of the public hearing
16 upon the proposed assessment.

17 (c) Each notice given pursuant to subdivision (b) shall contain
18 an assessment ballot that includes the agency's address for receipt
19 of the ballot and a place where the person returning the assessment
20 ballot may indicate his or her name, a reasonable identification of
21 the parcel, and his or her support or opposition to the proposed
22 assessment. Each assessment ballot shall be in a form that conceals
23 its contents once it is sealed by the person submitting the
24 assessment ballot. Each assessment ballot shall be signed and either
25 mailed or otherwise delivered to the address indicated on the
26 assessment ballot. Regardless of the method of delivery, all
27 assessment ballots shall be received at the address indicated, or
28 the site of the public testimony, in order to be included in the
29 tabulation of a majority protest pursuant to subdivision (e).
30 Assessment ballots shall remain sealed until the tabulation of
31 ballots pursuant to subdivision (e) commences, provided that an
32 assessment ballot may be submitted, or changed, or withdrawn by
33 the person who submitted the ballot prior to the conclusion of the
34 public testimony on the proposed assessment at the hearing
35 required pursuant to subdivision (d). An agency may provide an
36 envelope for the return of the assessment ballot, provided that if
37 the return envelope is opened by the agency prior to the tabulation
38 of ballots pursuant to subdivision (e), the enclosed assessment
39 ballot shall remain sealed as provided in this section.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. In a city, the impartial person may include, but is not limited to, ~~the clerk of the agency~~ *city clerk*. If the agency uses agency personnel for the ballot tabulation, or if the agency contracts with a vendor for the ballot tabulation and the vendor or its affiliate participated in the research, design, engineering, public education, or promotion of the assessment, then the ballots shall be ~~opened~~ *unsealed* and tabulated in public view at the conclusion of the hearing, ~~using visual aids if necessary, so as~~ to permit all interested persons to meaningfully monitor the accuracy of the tabulation process. The governing body of the agency may, if necessary, continue the tabulation at a different time or location accessible to the public, provided the governing body announces the time and location at the hearing. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Section 6252, and equally available for inspection by the proponents and the opponents of the proposed assessment. Any member of the public wishing to inspect and count assessment ballots shall also be given access, upon request, to the information needed to determine the correct weight for each ballot. The ballots shall be preserved for a minimum of two years, after which they may be destroyed as provided in Sections 26202, 34090, and 60201.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel shall

1 be allocated to each ballot submitted in proportion to the respective
2 record ownership interests or, if the ownership interests are not
3 shown on the record, as established to the satisfaction of the agency
4 by documentation provided by those record owners.

5 (2) A majority protest exists if the assessment ballots submitted,
6 and not withdrawn, in opposition to the proposed assessment
7 exceed the assessment ballots submitted, and not withdrawn, in
8 its favor, weighting those assessment ballots by the amount of the
9 proposed assessment to be imposed upon the identified parcel for
10 which each assessment ballot was submitted.

11 (3) If there is a majority protest against the imposition of a new
12 assessment, or the extension of an existing assessment, or an
13 increase in an existing assessment, the agency shall not impose,
14 extend, or increase the assessment.

15 (4) The majority protest proceedings described in this
16 subdivision shall not constitute an election or voting for purposes
17 of Article II of the California Constitution or of the Elections Code.

18 SEC. 2. Section 53755 of the Government Code is amended
19 to read:

20 53755. (a) (1) The notice required by paragraph (1) of
21 subdivision (a) of Section 6 of Article XIII D of the California
22 Constitution of a proposed increase of an existing fee or charge
23 for a property-related service being provided to a parcel may be
24 given by including it in the agency's regular billing statement for
25 the fee or charge or by any other mailing by the agency to the
26 address to which the agency customarily mails the billing statement
27 for the fee or charge.

28 (2) The notice required by paragraph (1) of subdivision (a) of
29 Section 6 of Article XIII D of the California Constitution of a
30 proposed new fee or charge may be given in the manner authorized
31 for notice of an increase of a fee or charge if the agency is currently
32 providing an existing property-related service to the address.

33 (3) If the agency desires to preserve any authority it may have
34 to record or enforce a lien on the parcel to which service is
35 provided, the agency shall also mail notice to the recordowner's
36 address shown on the last equalized assessment roll if that address
37 is different than the billing or service address.

38 (b) One written protest per parcel, filed by an owner or tenant
39 of the parcel, shall be counted in calculating a majority protest to
40 a proposed new or increased fee or charge subject to the

1 requirements of Section 6 of Article XIII D of the California
2 Constitution.

3 (c) Any agency that bills, collects, and remits a fee or charge
4 on behalf of another agency may provide the notice required by
5 Section 6 of Article XIII D of the California Constitution on behalf
6 of the other agency.

7 (d) If the fee or charge requires an election pursuant to
8 subdivision (c) of Section 6 of Article XIII D of the California
9 Constitution, ~~the election shall be conducted as follows:~~

10 ~~(1) If the agency chooses to submit the fee or charge to the~~
11 ~~electorate, the election may be held by mailed ballot, but shall be~~
12 ~~conducted by the city clerk or the registrar of voters if the agency~~
13 ~~is a city, or by the registrar of voters in the case of an agency other~~
14 ~~than a city. The election shall be held on an established election~~
15 ~~date pursuant to Section 1000 of the Elections Code or, in the case~~
16 ~~of a mailed ballot election, Section 1500 of the Elections Code.~~

17 ~~(2) If the agency chooses to limit the election to the owners of~~
18 ~~the property subject to the fee or charge, the agency shall conduct~~
19 ~~a mailed ballot proceeding in accordance with the regulations and~~
20 ~~procedures set forth in Section 53753, except that the ballots are~~
21 ~~not weighted. Only one ballot shall be submitted for each parcel.~~
22 *Constitution, the election shall be conducted by the elections*
23 *official on an established election date pursuant to Section 1000*
24 *of the Elections Code or, in the case of a mailed ballot election,*
25 *Section 1500 of the Elections Code. The provisions of the Elections*
26 *Code shall govern elections under this section, to the extent they*
27 *do not conflict with this section or Section 6 of Article XIII D of*
28 *the California Constitution. If the agency chooses to limit the*
29 *election to the owners of the property subject to the fee or charge,*
30 *the election shall be conducted by mailed ballot, and the agency*
31 *shall deliver to the elections official, by the date and in the format*
32 *requested by the official, a list of the property owners entitled to*
33 *vote in the election, and the addresses to which the agency mails*
34 *their bills. If the agency does not mail bills, then the agency shall*
35 *provide the addresses to which the property tax bills are mailed.*
36 *There shall be only one ballot per parcel and the ballots shall not*
37 *be weighted.*

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 a local agency or school district has the authority to levy service

- 1 charges, fees, or assessments sufficient to pay for the program or
- 2 level of service mandated by this act, within the meaning of Section
- 3 17556 of the Government Code.

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